

small motorboats. In such cases the clearances provided for high water stages will be considered adequate to meet the reasonable needs of navigation.

(b) The term “small motorboats” shall be interpreted in the light of the things and conditions with which it is associated. The term means rowboats, canoes and other similar craft with outboard motors. It does not include sailing or cabin cruiser craft.

(14 U.S.C. 633; 33 U.S.C. 401, 491, and 525; 49 U.S.C. 1655(g); and 49 CFR 1.46(c))

[CGFR 67-46, 32 FR 17771, Dec. 12, 1967, as amended by CGD 81-076, 46 FR 54936, Nov. 5, 1981; USCG-1998-3799, 63 FR 35527, June 30, 1998]

## PART 116—ALTERATION OF UNREASONABLY OBSTRUCTIVE BRIDGES

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AUTHORITY: 33 U.S.C. 401, 521; 49 U.S.C. 1655(g); 49 CFR 1.4, 1.46(c).

EDITORIAL NOTE: Nomenclature changes to part 116 appear at 73 FR 35012, June 19, 2008 and 75 FR 49410, Aug. 13, 2010.

SOURCE: CGD 91-063, 60 FR 20902, Apr. 28, 1995, unless otherwise noted.

### § 116.01 General.

(a) All bridges are obstructions to navigation and are tolerated only as long as they serve the needs of land transportation while allowing for the reasonable needs of navigation.

(b) This part describes the general procedures by which the U.S. Coast Guard determines a bridge to be an unreasonable obstruction to navigation and issues an Order to Alter under the

authority of the following statutes, as appropriate: Section 18 of the Rivers and Harbors Appropriations Act of 1899, 33 U.S.C. 502; Section 4 of the Bridge Act of 1906, 33 U.S.C. 494; or the Truman-Hobbs Act of 1940, as amended, 33 U.S.C. 511-524.

(c) A bridge constructed across a navigable water of the United States shall not unreasonably obstruct the free navigation of the water over which it was constructed, either due to insufficient height or width of the navigation span, or because of difficulty in passing through the draw opening. If any bridge unreasonably obstructs navigation, the Commandant, U.S. Coast Guard, will order the alteration of that bridge. Alterations may include structural changes, replacement, or removal of the bridge.

(d) Whenever the Coast Guard has good reason to believe that a bridge across any of the navigable waters of the United States is an unreasonable obstruction to navigation, the Coast Guard will give notice to the owner of the bridge and other interested parties, and hold a public meeting at which the interested parties will have a full opportunity to be heard and to provide information on the question of whether alterations to the bridge are necessary and, if so, the extent of alterations needed.

(e) If the Coast Guard determines that alterations to a bridge are necessary, the Commandant, U.S. Coast Guard, will issue to the bridge owner an Order to Alter containing details of the alterations necessary to render navigation through or under the bridge reasonably free, easy, and unobstructed.

(1) In the case of a railroad or publicly owned highway bridge, an Order to Alter is issued to the bridge owner under the provisions of the Truman-Hobbs Act (33 U.S.C. 511 *et seq.*). In ordering these alterations, the Coast Guard will give due regard to the necessities of free and unobstructed navigation and of rail and highway traffic. For alterations to bridges governed by the Truman-Hobbs Act, the Coast Guard must approve general plans, specifications, and contracts for the alteration project, as well as approving the apportionment of the total cost of

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the alterations between the United States and the bridge owner.

(2) For all other bridges, the Order to Alter will contain the required alterations for the bridge and will prescribe a reasonable time in which to accomplish the required alterations. The bridge owner is responsible for the entire cost of the required alterations.

[CGD 91-063, 60 FR 20902, Apr. 28, 1995, as amended by USCG-2010-0351, 75 FR 49410, Aug. 13, 2010]

### § 116.05 Complaints.

Any person, company, or other entity may submit to the District Commander of the Coast Guard district in which a bridge over a navigable water of the United States is located, a complaint that a bridge unreasonably obstructs navigation. The complaint must be in writing and include specific details to support the allegation.

### § 116.10 Preliminary review.

(a) Upon receipt of a written complaint, the District Commander will review the complaint to determine if, in the District Commander's opinion, the complaint is justified and whether a Preliminary Investigation is warranted.

(1) The District Commander's opinion as to whether or not the complaint warrants a Preliminary Investigation will be formed through informal discussions with the complainant, users of the affected waterway, the owner of the bridge, and other interested parties.

(2) In forming an opinion, the District Commander may also review the district files, records of accidents, and details of any additional written complaints associated with the bridge in question.

(b) In the absence of any written complaint, the District Commander may decide, based on a bridge's accident history or other criteria, to conduct a Preliminary Investigation.

(c) The District Commander will inform the complainant and the Administrator, Office of Bridge Programs of the determination of any Preliminary Review. If the District Commander decides that the bridge in question is not an unreasonable obstruction to navigation, the complainant will be provided

with a brief summary of the information on which the District Commander based the decision and will be informed of the appeal process described in § 116.55. There will be no further investigation, unless additional information warrants a continuance or reopening of the case.

[CGD 91-063, 60 FR 20902, Apr. 28, 1995, as amended by CGD 96-026, 61 FR 33663, June 28, 1996]

### § 116.15 Preliminary investigation.

(a) During the Preliminary Investigation, the District Commander will prepare a written report containing all pertinent information and submit the report, together with a recommendation for or against the necessity of a Detailed Investigation, to the Administrator, Bridge Administration Program.

(b) The Preliminary Investigation Report will include a description of the nature and extent of the obstruction, the alterations to the bridge believed necessary to meet the reasonable needs of existing and future navigation, the type and volume of waterway traffic, and a calculation of the benefits to navigation which would result from the proposed bridge alterations.

(c) The Administrator, Office of Bridge Programs will review the Preliminary Investigation Report and make a Preliminary Decision whether or not to undertake a Detailed Investigation and a Public Meeting.

(d) If after reviewing the Preliminary Investigation Report, the Administrator, Office of Bridge Programs decides that further investigation is not warranted, the complainant will be notified of the decision. This notification will include a brief summary of information on which the decision was based and details of the appeal process described in § 116.55.

[CGD 91-063, 60 FR 20902, Apr. 28, 1995, as amended by CGD 96-026, 61 FR 33663, June 28, 1996]

### § 116.20 Detailed investigation.

(a) When the Administrator, Office of Bridge Programs determines that a Detailed Investigation should be conducted, the District Commander will initiate an investigation that addresses all of the pertinent data regarding the

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bridge, including information obtained at a public meeting held under § 116.25. As part of the investigation, the District Commander will develop a comprehensive report, termed the "Detailed Investigation Report", which will discuss: the obstructive character of the bridge in question; the impact of that bridge upon navigation; navigational benefits derived; whether an alteration is needed to meet the needs of navigation; and, if alteration is recommended, what type.

(b) The District Commander will forward the completed Detailed Investigation Report to the Administrator, Office of Bridge Programs for review together with a recommendation of whether the bridge should be declared an unreasonable obstruction to navigation and, if so, whether an Order to Alter should be issued.

[CGD 91-063, 60 FR 20902, Apr. 28, 1995, as amended by CGD 96-026, 61 FR 33663, June 28, 1996]

## § 116.25 Public meetings.

(a) Any time the Administrator, Office of Bridge Programs determines that a Detailed Investigation is warranted, or when Congress declares a bridge unreasonably obstructive, the District Commander will hold a public meeting near the location of the bridge to provide the bridge owner, waterway users, and other interested parties the opportunity to offer evidence and be heard, orally or in writing, as to whether any alterations are necessary to provide reasonably free, safe, and unobstructed passage for waterborne traffic. The District Commander will issue a public notice announcing the public meeting stating the time, date, and place of the meeting.

(b) When a bridge is statutorily determined to be an unreasonable obstruction, the scope of the meeting will be to determine what navigation clearances are needed.

(c) In all other cases, the scope of the meeting will be to address issues bearing on the question of whether the bridge is an unreasonable obstruction to navigation and, if so, what alterations are needed.

(d) The meeting will be recorded. Copies of the public meeting transcript

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will be available for purchase from the recording service.

[CGD 91-063, 60 FR 20902, Apr. 28, 1995, as amended by CGD 96-026, 61 FR 33664, June 28, 1996]

## § 116.30 Administrator, Office of Bridge Programs Review and Evaluation.

(a) Upon receiving a Detailed Investigation Report from a District Commander, the Administrator, Office of Bridge Programs will review all the information and make a final determination of whether or not the bridge is an unreasonable obstruction to navigation and, if so, whether to issue an Order to Alter. This determination will be accompanied by a supporting written Decision Analysis which will include a Benefit/Cost Analysis, including calculation of a Benefit/Cost Ratio.

(b) The Benefit/Cost ratio is calculated by dividing the annualized navigation benefit of the proposed bridge alteration by the annualized government share of the cost of the alteration.

(c) Except for a bridge which is statutorily determined to be an unreasonable obstruction, an Order to Alter will not be issued under the Truman-Hobbs Act unless the ratio is at least 1:1.

(d) If a bridge is statutorily determined to unreasonably obstruct navigation, the Administrator, Office of Bridge Programs will prepare a Decision Analysis to document and provide details of the required vertical and horizontal clearances and the reasons alterations are necessary.

(e) If the Administrator, Office of Bridge Programs decides to recommend that the Commandant issue an Order to Alter, or a bridge is statutorily determined to unreasonably obstruct navigation, the Administrator, Office of Bridge Programs will issue a letter to the bridge owner ("The 60-Day Letter") at least 60 days before the Commandant issues an Order to Alter. This letter will contain the reasons an alteration is necessary, the proposed alteration, and, in the case of a Truman-Hobbs bridge, an estimate of the total project cost and the bridge owner's share.

(f) If the bridge owner does not agree with the terms proposed in the 60-Day

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Letter, the owner may request a reevaluation of the terms. The request for a reevaluation must be in writing, and identify the terms for which reevaluation is requested. The request may provide additional information not previously presented.

(g) Upon receipt of the bridge owner's response, the Administrator, Office of Bridge Programs will reevaluate the situation based on the additional information submitted by the bridge owner. If after the Administrator, Office of Bridge Programs reviews the determination, there is no change, the Commandant may issue an Order to Alter as set out in § 116.35. The Administrator, Office of Bridge Programs determination based on the reevaluation will constitute final agency action.

[CGD 91-063, 60 FR 20902, Apr. 28, 1995, as amended by CGD 96-026, 61 FR 33664, June 28, 1996]

### § 116.35 Order to Alter.

(a) If the bridge owner agrees with the contents of the 60-Day Letter, if no reply is received by 60 days after the issuance of the letter, or if after reevaluation a bridge is determined to be an unreasonable obstruction to navigation, the Commandant will issue an Order to Alter.

(1) If a bridge is eligible for funding under the Truman-Hobbs Act, the Order to Alter will specify the navigational clearances to be accomplished in order to meet the reasonable needs of navigation.

(2) An Order to Alter for a bridge that is not eligible for Truman-Hobbs funding will specify the navigational clearances that are required to meet the reasonable needs of navigation and will prescribe a reasonable time in which to accomplish them.

(b) If appropriate, the Order to Alter will be accompanied by a letter of special conditions setting forth safeguards needed to protect the environment or to provide for any special needs of navigation.

(c) If a proposed alteration to a bridge has desirable, non-navigational benefits, the Administrator, Office of Bridge Programs may require an equitable contribution from any interested person, firm, association, corporation, municipality, county, or state bene-

fitting from the alteration as a prerequisite to the making of an Order to Alter for that alteration.

(d) Failure to comply with any Order to Alter issued under the provisions of this part will subject the owner or controller of the bridge to the penalties prescribed in 33 U.S.C. 495, 502, 519, or any other applicable provision.

[CGD 91-063, 60 FR 20902, Apr. 28, 1995, as amended by CGD 96-026, 61 FR 33664, June 28, 1996]

### § 116.40 Plans and specifications under the Truman-Hobbs Act.

(a) After an Order to Alter has been issued to a bridge owner under the Truman-Hobbs Act, the Administrator, Office of Bridge Programs will issue a letter to the bridge owner outlining the owner's responsibilities to submit plans and specifications to the Administrator, Office of Bridge Programs for the alteration of the bridge. The plans and specifications, at a minimum, must provide for the clearances identified in the Order to Alter. The plans and specifications may also include any other additional alteration to the bridge that the owner considers desirable to meet the requirements of railroad or highway traffic. During the alteration process, balanced consideration shall be given to the needs of rail, highway, and marine traffic.

(b) The Administrator, Office of Bridge Programs will approve or reject the plans and specifications submitted by the bridge owner, in whole or in part, and may require the submission of new or additional plans and specifications.

(c) When Administrator, Office of Bridge Programs has approved the submitted plans and specifications, they are final and binding upon all parties, unless later changes are approved by the Administrator, Office of Bridge Programs. Any changes to the approved plans will be coordinated with the District Commander.

[CGD 91-063, 60 FR 20902, Apr. 28, 1995, as amended by CGD 96-026, 61 FR 33664, June 28, 1996]

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### § 116.45 Submission of bids, approval of award, guaranty of cost, and partial payments for bridges eligible for funding under the Truman-Hobbs Act.

(a) Once the plans and specifications for a bridge eligible for funding under the Truman-Hobbs Act have been approved, the bridge owner must take bids for the alteration of the bridge consistent with the approved plans and specifications. Those bids must then be submitted to the Administrator, Office of Bridge Programs for approval.

(b) After the bridge owner submits the guaranty of cost required by 33 U.S.C. 515, the Administrator, Bridge Administration Program authorizes the owner to award the contract.

(c) Partial payments of the government's costs are authorized as the work progresses to the extent that funds have been appropriated.

[CGD 91-063, 60 FR 20902, Apr. 28, 1995, as amended by CGD 96-026, 61 FR 33664, June 28, 1996]

### § 116.50 Apportionment of costs under the Truman-Hobbs Act.

(a) In determining the apportionment of costs, the bridge owner must bear such part of the cost attributable to the direct and special benefits which will accrue to the bridge owner as a result of alteration to the bridge, including expected savings in repairs and maintenance, expected increased carrying capacity, costs attributable to the requirements of highway and railroad traffic, and actual capital costs of the used service life. The United States will bear the balance of the costs, including that part attributable to the necessities of navigation.

(b) "Direct and special benefits" ordinarily will include items desired by the owner but which have no counterpart or are of higher quality than similar items in the bridge prior to alteration. Examples include improved signal and fender systems, pro rata share of dismantling costs, and improvements included, but not required, in the interests of navigation.

(c) During the development of the Apportionment of Costs, the bridge owner will be provided with an opportunity to be heard. Proportionate shares of cost to be borne by the

United States and the bridge owner are developed in substantially the following form:

Total cost of project \_\_\_\_\_ \$ \_\_\_\_\_  
 Less salvage \_\_\_\_\_ \$ \_\_\_\_\_  
 Less contribution by third party \_\_\_\_\_ \$ \_\_\_\_\_  
 Cost of alteration to be apportioned \_\_\_\_\_ \$ \_\_\_\_\_  
 Share to be borne by the bridge owner:  
 Direct and Special Benefits:  
 a. Removing old bridge \_\_\_\_\_ \$ \_\_\_\_\_  
 b. Fixed charges \_\_\_\_\_ \$ \_\_\_\_\_  
 c. Betterments \_\_\_\_\_ \$ \_\_\_\_\_  
 Expected savings in repair or maintenance costs:  
 a. Repair \_\_\_\_\_ \$ \_\_\_\_\_  
 b. Maintenance \_\_\_\_\_ \$ \_\_\_\_\_  
 Costs attributable to requirements of railroad and/or highway traffic \_\_\_\_\_ \$ \_\_\_\_\_  
 Expenditure for increased carrying capacity \_\_\_\_\_ \$ \_\_\_\_\_  
 Expired service life of old bridge \_\_\_\_\_ \$ \_\_\_\_\_  
 Subtotal \_\_\_\_\_ \$ \_\_\_\_\_  
 Share to be borne by the bridge owner \_\_\_\_\_ \$ \_\_\_\_\_  
 Contingencies \_\_\_\_\_ \$ \_\_\_\_\_  
 Total \_\_\_\_\_ \$ \_\_\_\_\_  
 Share to be borne by the United States \_\_\_\_\_ \$ \_\_\_\_\_  
 Contingencies \_\_\_\_\_ \$ \_\_\_\_\_  
 Total \_\_\_\_\_ \$ \_\_\_\_\_

(d) The Order of Apportionment of Costs will include the guaranty of costs.

### § 116.55 Appeals.

(a) Except for the decision to issue an Order to Alter, if a complainant disagrees with a recommendation regarding obstruction or eligibility made by a District Commander, or the Administrator, Office of Bridge Programs, the complainant may appeal that decision to the Deputy Commandant for Operations.

(b) The appeal must be submitted in writing to the Deputy Commandant of Operations, U.S. Coast Guard, (CG-DCO), 2100 2nd St., SW., Stop 7355, Washington, DC 20593-7355, within 60 days after the District Commander's or the Administrator, Office of Bridge Programs decision. The Deputy Commandant for Operations will make a decision on the appeal within 90 days after receipt of the appeal. The Deputy Commandant of Operations' decision of this appeal shall constitute final agency action.

(c) Any Order of Apportionment made or issued under section 6 of the Truman-Hobbs Act, 33 U.S.C. 516, may be reviewed by the Court of Appeals for any judicial circuit in which the bridge in question is wholly or partly located, if a petition for review is filed within 90 days after the date of issuance of the order. The review is described in section 10 of the Truman-Hobbs Act, 33 U.S.C. 520. The review proceedings do not operate as a stay of any order issued under the Truman-Hobbs Act, other than an order of apportionment, nor relieve any bridge owner of any liability or penalty under other provisions of that act.

[CGD 91-063, 60 FR 20902, Apr. 28, 1995, as amended by CGD 96-026, 61 FR 33663, June 28, 1996; CGD 97-023, 62 FR 33363, June 19, 1997; USCG-2008-0179, 73 FR 35013, June 19, 2008; USCG-2010-0351, 75 FR 36283, June 25, 2010]

## PART 117—DRAWBRIDGE OPERATION REGULATIONS

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